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(3) Helicopters shall be used to observe the presence of dangerous areas and may be used to move animals away from hazards during capture operations.

(4) During capture operations, animals shall be moved in such a way as to prevent harmful stress or injury.

(5) The authorized officer shall supervise all helicopter uses as follows:

(i) Have means to communicate with the pilot and be able to direct the use of the helicopter; and

(ii) Be able to observe effects of the use of the helicopters on the well-being of the animals.

(c) Fixed-wing aircraft may be used for inventory, observation, and surveillance purposes necessary in administering the Act. Such use shall be consistent with the Act of September 8, 1959, as amended (18 U.S.C. 41 *et seq.*). Fixed-wing aircraft shall not be used in connection with capture operations except as support vehicles.

(d) Motor vehicles may be used in the administration of the Act except that such vehicles shall not be used for driving or chasing wild horses or burros in capture operations. Motor vehicles may also be used for the purpose of transporting captured animals subject to the following humane procedures.

(1) Such transportation shall comply with appropriate State and Federal laws and regulations applicable to humane transportation of horses and burros.

(2) Vehicles shall be inspected by an authorized officer prior to use to ensure vehicles are in good repair and of adequate rate capacity.

(3) Vehicles shall be carefully operated to ensure that captured animals are transported without undue risk or injury.

(4) Where necessary and practical, animals shall be sorted as to age, temperament, sex, size, and condition so as to limit, to the extent possible, injury due to fighting and trampling.

(5) The authorizing officer shall consider the condition of the animals, weather conditions, type of vehicle, and distance to be traveled when planning for transportation of captured animals.

(6) Unless otherwise approved by the authorized officer, the transportation

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of wild free-roaming horses and burros shall be limited in sequence, to a maximum of 24 hours in transit followed by a minimum of 5 hours of on-the-ground rest with adequate feed and water.

§ 222.25 Protection of wild free-roaming horses and burros when they are upon other than the National Forest System or public lands.

Individual animals and herds of wild free-roaming horses and burros will be under the protection of the Chief, Forest Service, even though they may thereafter move to lands of other ownership or jurisdiction as a part of their annual territorial habitat pattern or for other reasons. The Chief will exercise surveillance of these animals through the use of cooperative agreements and as otherwise authorized by law and act immediately through appropriate administrative or criminal and civil judicial procedures to provide them the protective measures of the Act at any time he has cause to believe its provisions are being violated.

§ 222.26 Removal of wild free-roaming horses and burros from private lands.

Owners of land upon which wild free-roaming horses and burros have strayed from the National Forest System may request their removal by calling the nearest office of either the Forest Service or Federal Marshall.

§ 222.27 Maintenance of wild free-roaming horses and burros on privately-owned lands.

Owners of land who wish to maintain wild free-roaming horses and burros which have strayed onto their lands from the National Forest System may do so by notifying the nearest office of the Forest Service in a timely fashion and providing such information on a continuing basis as the Chief, Forest Service, may require. Such owners shall protect the wild free-roaming horses and burros on their lands. They may not, in so maintaining these animals, impede their return to National Forest System lands unless authorized by agreement with the Forest Service.

§ 222.28 Agreements.

The Chief, Forest Service, may enter into agreements as he deems necessary

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to further the protection, management, and control of wild free-roaming horses and burros.

§ 222.29 Relocation and disposal of animals.

(a) The Chief, Forest Service, shall, when he determines over-population of wild horses and burros exists and removal is required, take immediate necessary action to remove excess animals from that particular territory. Such action shall be taken until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from deterioration associated with over-population.

(b) No person except an authorized Forest Service officer or his agent shall destroy, remove, or relocate any wild free-roaming horse or burro located on the National Forest System.

(c) Wild horses and burros shall be relocated or removed in the following order of priority:

(1) In the most humane manner possible, sick, lame, or old animals shall be destroyed;

(2) Relocate animals to other National Forest System lands which were identified as 1971 wild horse or burro territory, providing suitable habitat exists and relocation of animals will not jeopardize vegetation condition;

(3) Relocate animals to other federally-owned lands which were identified as 1971 wild horse or burro occupied lands, providing suitable habitat exists and relocation of animals will not jeopardize vegetation condition and animals are requested by the appropriate land manager having jurisdiction;

(4) Place animals under private maintenance and care agreements where there is an adoption demand by qualified individuals, groups, or Government agency, and for which there is assurance of humane treatment and care, provided not more than four animals are placed under private maintenance and care agreements per year to any individual, organization, or government agency unless there is a determination expressed otherwise in writing, by an authorized Forest Service Officer; and

(5) Excess animals, for which an adoption demand by qualified appli-

cants does not exist, shall be destroyed in the most humane manner possible, and if several methods are equally humane, select the most cost efficient.

(d) Where excess animals have been placed under private maintenance and care agreements after December 15, 1971, as provided for in paragraph (c)(4) of this section, and animals have been provided humane conditions, treatment, and care, for a period of one year, the Chief, Forest Service, may grant title to not more than four animals per year to each individual, organization, or government agency.

(e) The applicants must make written application for title and/or adoption, must be of legal age in the State in which they reside, and must pay fees for adoption and transportation as follows:

(1) The application must be accompanied by a nonrefundable advance payment of \$25 by guaranteed remittance. If custody of a wild, free-roaming horse or burro is granted by the authorized Forest Service officer, the advance payment shall be applied against the adoption fee required to be paid at the time the maintenance and care agreement § 222.29(c)(4) is executed.

(2) The Forest Service shall charge an adoption fee of \$125 for each horse and \$75 for each burro, except that there shall be no adoption fee for an unweaned offspring under 6 months of age accompanying its mother.

(3) Any transportation costs incurred for the transportation of the animal(s) to the point of pickup must be paid before an approved individual, group, or government agency takes custody of the animal(s).

(f) Humane conditions, treatment, and care must have been provided for no less than one year preceding the filing of the application for title. The conveyance of title shall include a written statement by an authorized officer attesting that the animal is in good condition.

[45 FR 24135, Apr. 9, 1980, as amended at 46 FR 42450, Aug. 21, 1981; 48 FR 25188, June 6, 1983]

§ 222.30 Disposal of carcasses.

Carcasses of animals that have lost their status as wild free-roaming horses or burros may be disposed of in